IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

OP.No. 12716 of 1999(L)

PETITIONER:

TITTY BABU, W/O.BABU P.GEORGE,
PAZHOOR HOUSE, VADAVATHOOR P.O., KOTTAYAM DIST.

BY ADV. SRI.P.SANTHALINGAM
SMT.JEENA JOSEPH

RESPONDENTS:

1.SECRETARY TO GOVERNMENT,
COOP. DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2.MANAGING DIRECTOR, MALAPPURAM COOP. SPINNING MILL LTD.,
MALAPPURAM.

3.ASST.REGISTRAR OF COOP. SOCIETIES, ARBITRATOR,
DISTRICT INDUSTRIES CENTRE, MALAPPURAM.

4.CO-OP.TRIBUNAL, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.MANOJ KUMAR.
SRI.U.K.RAMAKRISHNAN
SRI.E.K.MADHAVAN
SRI.P.V.LOHITHAKSHAN
SRI.V.KRISHNA MENON

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.20316/99 IN O.P. NO.12716 OF 1999

DISMISSED

21.3.2007. SD/- KURIAN JOSEPH, JUDGE.

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1 TRUE COPY OF AWARD NO.A.R.C.1/88 DT. 8.3.89 IN THE COURT OF THE ASST.REGISTRAR OF COOPERATIVE SOCIETIES, DIST.INDUSRIES CENTRE, MALAPPURAM.

EXT.P2 TRUE COPY OF THE REVISION PETITION NO.36/97 FILED BY THE PETITIONER'S HUSBAND BEFORE THE KERALA COOP.TRIBUNAL, TRIVANDRUM.

EXT.P3 TRUE COPY OF THE COUNTER AFFIDAVIT FILED IN R.P.NO.36/97 DT. 20.7.97 BEFORE THE KERALA COOP.TRIBUNAL, TRIVANNDRUM.

EXT.P4 TRUE COPY OF RECONSTITUTED DEED OF PARTNERSHIP DT. 1.4.1992.

EXT.P5 TRUE COPY OF ORDER IN R.P.NO.36/97 DT. 19.11.98 IN THE COURT OF KERALA COOP.TRIBUNAL, THIRUVANANTHAPURAM.

TGS

KURIAN JOSEPH, J.

O.P.No.12716 of 1999

Dated 21st March, 2007.

J U D G M E N T

Challenge is on Ext.P1 award passed by the Arbitrator and Ext.P5 order of the Kerala Cooperative Tribunal, Thiruvananthapuram, under the provisions of the Kerala Cooperative Societies Act, 1969. Ext.P1 was an ex parte award. The stand of the respondent before the Arbitrator was that he had no personal liability and the entire transaction was of the firm. Since no opportunity was available to contest the matter on merits, the matter was pursued before the Tribunal leading to Ext.P5 judgment. Unfortunately there is no reference to the contentions as to whether the late husband of the petitioner had personal liability and whether the transaction was only that of the firm and the consequential liability is limited to the firm. Unless that crucial issue is addressed and answered, it cannot be said that there is an order on merits. Therefore, I set aside Ext.P5 with a direction to the Tribunal to consider the matter afresh with notice to the parties. It is made clear that while passing orders as above, the Tribunal shall address the question on merits as to whether there is any personal liability on the late husband of the

petitioner in the transaction and whether the liability is only of the firm. Needless to say that in case there is no personal liability, there shall not be any steps against the petitioner or the assets of her late husband. The fate of the amounts deposited by the petitioner would depend on the orders to be passed by the Tribunal. In case the petitioner has no liability, the amounts if any deposited by the petitioner would be refunded with 8% interest. There shall be no recovery till orders are passed by the Tribunal.

The writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J

O.P.No.12716 of 1999 (L)

J U D G M E N T

Dated 21st March, 2007.